IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6247 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYANTILAL JAMNADAS JARIWALA FRIEND AND VEVAI OF DETENUE

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

Mr. K.T.Dave, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 29/02/2000

ORAL JUDGEMENT

Heard learned Advocate Mr. N.M. Kapadia for the petitioner and learned A.G.P. Mr.K.T. Dave for the respondents nos.1, 2 and 3.

1. The petitioner-Jayantilal Jamnadas Jariwala has challenged the detention order dated 5-8-1999 passed by the Commissioner of Police, Surat (the respondent no.1) against the detenu-Rameshchandra Parbhudas Modi in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985("PASA" for short) in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the petitioner -detenu under Sec.9(1) of "PASA" , copy of which is produced at running page 29 to 33 inter alia indicate that the petitioner is alleged to have been involved in two criminal cases registered at Nashabandi West Division Police Station vide CR no.1154/98 and 462/99 dated 15-12-1998 and 23-6-1999 respectively. That in each case Indianmade foreign liquor has been seized and the matters are pending for trial in Court.

2.1 Over and above that, two witnesses on assurance of their anonymity have given statements dated 9-7-1999 and 11-7-1999 respectively regarding the bootlegging activities of the detenu and have narrated two incidents alleged to have occured on 3-5-1999 and 30-6--199 respectively.

3. That in consideration of the aforesaid material, the respondent no.1 as detaining authority has come to the conclusion that the detenu is a "bootlegger" within the meaning of Section 2(b) of " PASA". That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the detenu at the Bar that the detenu was released on bail in respect to CR no.1154/98 on 16-12-1998 and in respect to CR no.462/99 on 24-6-99. However, the detaining authority in the grounds of detention has only stated that having been released on bail he is likely to continue his bottlegging activities, but failed to consider the less drastic remedy of opposing and/or claiming cancellation of bail under Sec.437(5) of the Cr.P.C.,and as such, the impugned order suffers from the vice of non application of mind which vitiates the subjective satisfaction arrived at by the detaining authority and renders the impugned order bad in law.

5. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT AND ORS. (1995 (2) G.L.H. 1134),

the Division Bench of this Court has expressed the view that non consideration of less drastic remedy like cancellation of bail under Section 437(5), Cr.P.C. amounts to non application of mind vitiating the detention order. That the said view has been approved and endorsed in the proceedings of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram:C.K.Thakkar & A.L.Dave,JJ.).

6. On scrutiny of papers, it is clear that the detaining authority has failed to consider the aspect of less drastic remedby of claiming cancellation of bail as available under Sec.437(5) of the Cr.P.C. and under the circumstances as no affidavit on behalf of either of the respondents is filed despite service or rule, there is no explanation on record to the contention urged on behalf of the detenu. Consequently, it is difficult to uphold the order.

7. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 5-8-1999 passed by the Commissioner of Police, Surat (respondent no.1) is hereby quashed and set aside. The detenu-Rameshchandra Parbhudas Modi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

(A.K.Trivedi,J.)

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